

INSURANCE COUNSELOR

Insurance Consumer Information Sheet

Uninsured and Underinsured Motorist Coverages Possible Exclusions

If you purchase uninsured (UM) or underinsured (UIM) motorist coverage on your Michigan auto insurance policy, you should be aware of a recent court case that may affect you. UM/UIM coverages are optional. You are not required by law in the State of Michigan to purchase UN/UIM coverage.

Anyone injured in or by a motor vehicle in Michigan is entitled to unlimited medical benefits. These benefits are paid by your own auto insurance company. If you are a pedestrian and you do not have your own auto insurance policy or access to coverage under a policy within your household, your medical benefits should be paid by the insurance company of the owner of the motor vehicle involved in the accident.

There are a few situations when you are also entitled to sue the at-fault driver for non-economic loss, such as "pain and suffering." To qualify to sue the at-fault driver, your injuries must meet what is referred to as the "tort threshold". You may meet this definition if the other driver is at fault and you or someone covered by your policy is killed, seriously injured, or permanently disfigured. If the injuries from the accident meet this tort threshold, you would then be eligible to sue the at-fault driver for non-economic loss and for excess lost wages that are not covered by your own policy.

However, there are some instances where you may meet the tort threshold but would be unable to collect pain and suffering damages

from the at-fault driver because he/she is uninsured, carries only minimal liability coverage, or because the driver of the vehicle is unknown (in the case of a hit-and-run accident).

Uninsured (UM) and underinsured (UIM) motorist coverage are two optional coverages that may apply in these instances. With these coverages, your own insurance company would compensate you for pain and suffering and excess wage loss in the event that you or a member of your family is seriously injured, meets the tort threshold, and is unable to recover damages from the at-fault driver who was uninsured or underinsured. Again, these coverages are optional and apply only if a hit-and-run vehicle or an uninsured or underinsured motorist strikes you or someone covered by your policy and you meet the injury and/or wage loss threshold.

You should be aware that a recent court case (*Cole v Auto-Owners*, 272 Mich App 50 (2006)) limited UM and UIM benefit recoveries in Michigan. Policy language in this particular case limited the company's liability to someone occupying a vehicle or to a pedestrian. The case involved a child on a bicycle who was hit and seriously injured by a motor vehicle. The child's parents filed a claim with their own insurance company for UM/UIM benefits. The company denied the claim based on its policy language that restricted coverage to either the occupant of a motor vehicle or to a pedestrian. Even though it could be argued that this coverage was intended to protect anyone injured by a motor

vehicle, regardless of whether that person was an occupant of the motor vehicle, the court ruled in favor of the company, agreeing that a bicyclist would not qualify as a pedestrian, and therefore would not be eligible for UM/UIM benefits.

Following this same logic, there may be multiple situations that could be excluded from UM and UIM coverages. Children or adults hit by a car and injured while on their bicycles, roller skates, scooters, skateboards, etc. could be excluded. Obviously, this could be of major concern for parents of children who routinely ride their bicycles to school and/or in their neighborhoods and who through no fault of their own are seriously injured or even killed by a motor vehicle. Parents may be left with no legal recourse, even though they thought they had purchased adequate coverage.

The Office of Financial and Insurance Regulation (OFIR) is the entity responsible for regulating insurance in the State of

Michigan. The OFIS will attempt to address this situation through the legislative process. However, in the interim, you should check your current auto insurance policy to see whether you have chosen to purchase these optional coverages. If you did, contact your insurance agent and/or insurance company to verify whether there are any restrictions or exclusions for this coverage.

Verify that you have coverage for your children and/or anyone else covered on your policy, regardless of whether they are in a motor vehicle, walking, or using some form of transportation other than a motor vehicle (e.g. riding a bicycle, skateboard, roller skates, roller blades). If you find that your policy restricts UM and/or UIM coverages to pedestrians, you may choose to shop around for another company that does not limit your coverage in such a manner.

If you have questions about this issue, please feel free to contact our office at the address or telephone number listed below.